Administration in Penang, which were granted on the 25th of April 1939.

I think one must draw a hard and fast line in the case of resealing; just as much as in the grant of ordinary Letters of Administration. It is beyond dispute that in the ordinary way, an Administrator is not entitled to sue as such until he has obtained the grant of Letters of Administration.

At the time when the plaint was filed, the Plaintiff had no administrative capacity, so far as the Federated Malay States were concerned. The plaint might just as well have been signed by a stranger to the intestate —the plaintiff having no more rights in the intestate's property in the Federated Malay States than a stranger. That being so, I consider that the defence is good, namely, the Plaintiff had no power at the time of the issue of the plaint to institute this suit. There will therefore be judgment for the Defendant with costs.

Judgment for defendant.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

January 11, 1941.

MUTHUKARUPPAN CHETTY

v.

PUBLIC PROSECUTOR.

[PAHANG MAGISTRATE'S CRIMINAL APPEAL No. 18 of 1940]

Sanitary Boards Enactment (Cap. 137), By-law 87A—allowing cattle to stray in prohibited area—invalidity of by-law.

By-law 87A made under the Sanitary Boards Enactment (Cap. 137) is void in so far as it prescribes a fine not exceeding $10.00 in respect of every animal which is found straying or grazing in a prohibited area under the Enactment.

MAGISTRATE'S CRIMINAL APPEAL.

M. Morrison for Appellant.

A. J. Grattan Bellew, D.P.P., for Public Prosecutor.

Horne, J.—The appellant is the owner of certain cattle. The cattle when in charge of a herd, the owner's employee, were found straying in a ravine in which is situated a drain constructed as an anti-malarial measure.

The owner was charged with contravening Pahang By-law 87A made under the authority of Chapter 137 (Sanitary Boards):—

> "87A. (i) Whenever it appears to the Board that the grazing of cattle, sheep, horses, goats and pigs on any land is likely to be prejudicial or dangerous to health or favourable to the existence or propagation of mosquitoes, the Board may prohibit the grazing or straying of cattle, sheep, horses, goats and pigs on such land and shall erect and maintain thereon notice boards of such number and in such languages as may seem desirable proclaiming that such straying or grazing is prohibited.
>
> (ii) The erection of such notice boards shall be deemed to be sufficient notice to all persons that the straying and grazing of cattle, sheep, horses, goats and pigs on such land is prohibited.
>
> (iii) Any person who allows his cattle, sheep, horses, goats, and pigs to stray or graze in a prohibited area shall be liable on conviction to a fine not exceeding $10.00 in respect of every such animal".

Several objections to the conviction were raised by the grounds of appeal and were argued before me and I reserved judgment. On consideration it appeared to me that the by-law is void for there is no power to impose a penalty per head of cattle; and the parties through their advocates were given the opportunity of further argument but have decided to leave the matter to the Court.

The sections empowering a Sanitary Board to make by-laws are section 16 and section 17 of Chapter 137:—

> "17. (i) A Sanitary Board may in making any by-law prescribe the fine with which the contravention thereof shall be punishable, but so that such fine shall not exceed for any one offence the sum of fifty dollars or in the case of a continuing offence the sum of five dollars for every day during which such offence is continued.
>
> (ii) Any person who contravenes any by-laws for the breach of which no fine is prescribed and any person who fails to comply with the terms of any order lawfully made or any notice lawfully given by the Board or the Chairman under the provisions of any by-law, if no other penalty is prescribed, shall be punished with a fine which may extend to two hundred and fifty dollars or in the case of a continuing offence to the sum of ten dollars a day for every day during which such offence is continued".

The sub-by-law (iii) of By-law 87A provides however for "a fine not exceeding $10.00 in respect of every such animal". In the present case the appellant was prosecuted in respect of 27 heads of cattle and fined $135.00.

The rule of law as to the construction of by-laws applicable to this case is stated in *Hailsham* Volume 8, paragraph 82:—

> "A bye-law which is void in part is void altogether, except when the void part can be severed from that which is good, and the latter can be enforced independently".

Sub-by-law (iii) can be severed but upon severance the remainder of by-law 87A cannot be enforced independently. I must hold it to be void.

As the conviction must be quashed on this ground there is no need for me to deal with the other points as to the construction of this by-law, which have been raised in this appeal.

The appeal is allowed. The conviction quashed and the fine (if paid) is to be returned.

Appeal allowed. Conviction quashed.